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**TITLE 329 SOLID WASTE MANAGEMENT BOARD****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #09-365

**DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING TEMPORARY STORAGE OF SPENT LEAD ACID BATTERIES****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules and amendments to rules in [329 IAC 3.1](#) concerning temporary storage of spent lead acid batteries. This rulemaking will propose requirements for the management of spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, other storage facilities, and reclamation facilities. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [329 IAC 3.1-11-2](#); [329 IAC 3.1-11.1](#)

**AUTHORITY:** [IC 4-22-2](#); [IC 13-14-8-4](#); [IC 13-14-8-7](#); [IC 13-14-9](#); [IC 13-19-3-1](#); [IC 13-22-2](#)

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

The proposed rule would provide requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, other storage facilities, and reclamation facilities, to prevent releases of contaminants into the environment. Intermittent storage of partially reclaimed spent lead acid batteries is also proposed to be regulated.

A proposed definition of "spent lead acid battery" would include any lead acid battery being discarded, abandoned, or disposed of, making it more consistent with the statutory reference ([IC 13-20-16](#)) to "used" lead acid batteries. [IC 13-20-16](#) regulates particular aspects of the lead acid battery recycling process.

The proposed rules are consistent with Indiana's environmental requirements and require basic, common sense storage practices. Spent lead acid battery reclaimers would be allowed to stage whole spent lead acid batteries on incoming trailers for up to 14 days on an asphalt or concrete surface maintained in good condition. Management practices, which include mainly inspection and maintenance requirements, would be required to be met during the staging period.

The proposed rule would require intermediate storage facilities that accumulate more than 5,000 kilograms of spent lead acid batteries to notify IDEM of the storage location, which is consistent with the notification requirements for large quantity handlers of universal waste (40 CFR 273, Subpart C).

Closure requirements would apply to the regulated intermittent storage areas allowing for the utilization of current risk integrated system of closure (RISC) performance standards. Under the proposed rule, corrective action could be initiated at any time during the life of the facility.

Requirements for transporters of spent lead acid batteries would also be clarified under this proposal.

**Alternatives to be Considered Within the Rulemaking**

IDEM is considering two alternatives in this rulemaking, as follows:

Alternative 1. IDEM can add to and amend the requirements for the management of temporarily stored spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, and other storage facilities to prevent releases to the environment. This rulemaking would also make the existing statutory and federal requirements a better fit with the actual practices at regulated entities.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? IDEM is clarifying and expanding on applicable federal regulations. 40 CFR 266, 40 CFR 271, and 42 U.S.C. 6901 et seq.
- If this alternative is a federal requirement, is it different from federal law? Yes, this alternative is different from the federal law as IDEM is proposing to add and amend requirements in the state rules for the management of spent lead acid batteries, including transportation and storage, by retailers, wholesalers, manufacturers, auto salvage yards, intermediate storage facilities, and reclamation facilities, as it makes sense for protecting the environment. Whereas, federal law regulates only storage of spent lead acid batteries prior to reclamation only at the reclamation facilities.

Alternative 2. IDEM can leave the existing rules as is without making changes to [329 IAC 3.1](#). Existing minimal requirements would still exist in Indiana law and federal regulations. Not changing the rules would leave state rules inconsistent with actual practices by regulated entities and would not address management issues that IDEM wants to address or clarify.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.

- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If this alternative is a federal requirement, is it different from federal law? No.

### **Applicable Federal Law**

42 U.S.C. 6901 et seq., Sections 3006 and 3009 of RCRA, and 40 CFR 271 require states that choose to administer and enforce a hazardous waste management program, in lieu of the federal program, to adopt rules that are at least as stringent as the federal program. These programs can be authorized by the EPA to operate in lieu of the federal hazardous waste program. If the EPA administrator determines that a state is not maintaining its program to be at least as stringent as the federal program, that authorization can be withdrawn.

The proposed rulemaking is not less stringent than federal rules. By this rulemaking, IDEM is adding requirements and clarifying existing rules.

### **Potential Fiscal Impact**

Alternative 1 is not required to be adopted under federal law and may potentially have the following fiscal impact:

Potential Fiscal Impact of Alternative 1.

Implementation of this alternative will generally result in minimal fiscal impact on affected parties. In fact, this rulemaking may result in savings through the allowance for staging for spent lead acid batteries. Requirements for intermittent storage of spent lead acid batteries during recycling may have some impact on facilities that are not currently managing that storage under the proposed standards. IDEM will not have to hire additional staff for compliance and enforcement purposes and will be able to utilize existing resources to administer the rule. IDEM invites comment on the potential fiscal impact of this alternative.

Alternative 2 is not required to be adopted under federal law and will have the following fiscal impact:

Potential Fiscal Impact of Alternative 2.

This alternative will not have any fiscal impact since nothing will be changed.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

[www.in.gov/idem/compliance/ctap/index.html](http://www.in.gov/idem/compliance/ctap/index.html)

Small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Alison Surface

IDEM Compliance and Technical Assistance Program - OPPTA

100 North Senate Avenue, MC 60-04

Indianapolis, IN 46204-2251

(317) 234-1191 or (800) 988-7901

[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

The Small Business Assistance Program Ombudsman is:

Brad Baughn

IDEM Small Business Assistance Program Ombudsman

MC 50-01, IGCN 1301

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386

[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

### **Public Participation and Workgroup Information**

Currently, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Kiran Verma, Rules Development Branch, Office of Legal Counsel at (317) 232-8899 or (800) 451-6027 (in Indiana).

### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human,

plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.
- (3) The submission of information on the fiscal impact of alternatives identified in this notice.

Mailed comments should be addressed to:

#09-365(SWMB) (Spent Lead Acid Battery Rule)  
Janet Pittman  
Rules Development Branch  
Office of Legal Counsel, MC 65-46  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 46204-2251

Hand delivered comments will be accepted by the IDEM receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5517, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by July 6, 2009.

Additional information regarding this action may be obtained from Kiran Verma, Rules Development Branch, Office of Legal Counsel, (317) 232-8899 or (800) 451-6027 (in Indiana).

Nancy King,  
Chief, Rules Development Branch  
Office of Legal Counsel

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